

Rene1 Brewer, #249214
Name, Prisoner ID #
SSN: 444-76-2643

PO Box 97
McAlester, OK
Address

FILED
JUL 10 2002
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

02C V545 EA

Rene1 Brewer, Petitioner
(Full Name)

v.

Case No. _____

(To be supplied
by the Clerk)

Mike Mullin, Respondent
(Name of Warden, Superintendent,
Jailor or authorized person having
custody of petitioner)

**PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2254 BY A
PERSON IN STATE CUSTODY**

NOTE: If petitioner is attacking a judgment which imposed a sentence to be served in the **future**, petitioner must fill in the name of the state where the judgment of conviction was entered. If the petitioner has a sentence to be served in the **future** under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

- 1) Name and location of the court which entered the judgment of conviction under attack District Court of Tulsa, Oklahoma
- 2) Date judgment of conviction was entered December 20, 1999
- 3) Case number CF-99-426
- 4) Length and terms of sentence 21 OS § 701.7 - Life imprisonment w/out possibility of parole; 21 OS § 652 - 100 years running consecutively; \$10,000 fine.
- 5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes No

6) Nature of the offense involved (all counts) 21 OS § 701.7 - Murder,
First Degree; 21 OS § 652 - Shooting with Intent to Kill

7) What was your plea? (check one)

a) Not Guilty b) Guilty c) Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A

8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: N/A

9) Kind of trial (check one)

a) Jury Trial b) Judge without a Jury

10) Did you testify at trial (if any)? Yes No

Direct Appeal

11) Did you appeal the judgment of conviction? Yes No

12) If you did appeal, state the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order) Court of Criminal Appeals, State of Oklahoma
Trial Court's decision affirmed - July 12, 2001
F-1999-1663

13) If you did not appeal, explain briefly why you did not N/A

a) Did you seek permission to file a late appeal? Yes No

Post-conviction Proceedings

14) Other than a Direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No

15) If your answer to 14 was "Yes", give the following information:

a) **First petition, application or motion.**

1) Name of court N/A

2) Nature of proceeding N/A

3) Grounds raised:

N/A

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No N/A

5) Result N/A

6) Date of result N/A

7) Did you appeal the result to the highest state court having jurisdiction? Yes No If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

N/A

8) If you did not appeal, briefly explain why you did not N/A

b) **As to any second petition, application or motion.**

1) Name of court N/A

2) Nature of proceeding N/A

3) Grounds raised:

N/A

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No N/A

5) Result N/A

6) Date of result N/A

7) Did you appeal the result to the highest state court having jurisdiction? Yes No If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

N/A

8) If you did not appeal, briefly explain why you did not N/A

c) **As to any third petition, application or motion.**

1) Name of court N/A

2) Nature of proceeding N/A

3) Grounds raised:

N/A

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No N/A

5) Result N/A

6) Date of result N/A

7) Did you appeal the result to the highest state court having jurisdiction? Yes No If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

N/A

8) If you did not appeal, briefly explain why you did not N/A

16) State concisely every ground on which you claim that you are being unlawfully held. Summarize briefly the facts supporting each ground. If necessary, you may attach up to two extra pages stating additional grounds or supporting facts. You should raise in this petition all available grounds for relief which relate to the conviction under attack.

CAUTION

Before proceeding in a federal court, you are required to exhaust the remedies available to you in the state courts as to each ground on which you request action by the federal court.

A)(1) **Ground One: Due process violations - 14th Amendment**

Insufficient evidence for finding of guilt to (a) first degree murder and (b) shooting with intent to kill.

(2) Supporting facts: (A) State did not prove it's burden of proof as to first degree murder. No evidence of aiding and abetting, each element of crime was not proven beyond reasonable doubt. (B) No evidence presented for finding of guilt as to shooting with intent to kill.

Please see attached brief.

(3) Statement of Exhaustion of State Remedies as to Ground One: State's highest criminal court had decided the precise issue claim presented in the Petition. Further state court proceedings would be futile.

Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not N/A

Post Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

N/A

(e) Did you receive an evidentiary hearing on your motion or petition? Yes No N/A

(f) Did you appeal from the denial of your motion or petition? Yes No N/A

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No , and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order) N/A

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain This is original petition. An evidentiary hearing on the petition has not yet occurred.

Other Remedies

(I) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue Direct appeal to Oklahoma Court of Criminal Appeals

B)(1) **Ground Two:** Due process violation - 14th Amendment in error in admitting prejudicial evidence.

(2) **Supporting facts:** (1) State asserted presumption that membership in a gang constitutes guilt by association/common behavior. (2) State presented witnesses who testified as experts who were not qualified to do so.

Please see attached brief.

(3) **Statement of Exhaustion of State Remedies as to Ground Two:** Same as Ground 1 Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No .

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not N/A

Post conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes No .

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision
N/A

(e) Did you receive an evidentiary hearing on your motion or petition?
Yes No N/A

(f) Did you appeal from the denial of your motion or petition?
Yes No N/A

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No , and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)
N/A

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain
This is original petition. Evidentiary hearing on the petition has not yet occurred.

Other Remedies

(I) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue Direct appeal to Oklahoma Court of Criminal Appeals

C)(1) **Ground Three:** Due process violation - 14th Amendment

Prosecutorial misconduct

(2) **Supporting facts:** Prosecutor made improper statements and comments in closing, and during other times at trial. Please see attached brief.

(3) **Statement of Exhaustion of State Remedies as to Ground Three:** Same as Ground 1

Direct Appeal

(a) If you appealed from the judgment of conviction did you raise this issue? Yes No _____

(b) If you did not raise this issue in your Direct appeal, explain briefly why you did not N/A _____

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes No _____

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

N/A _____

(e) Did you receive an evidentiary hearing on your motion or petition? Yes No N/A _____

(f) Did you appeal from the denial of our motion or petition? Yes No N/A _____

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal, Yes No and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

N/A _____

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain
Original Petition for Writ; Evidentiary hearing
has not yet occurred.

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue Direct Appeal to Oklahoma Court of Criminal Appeals.

17) Have all grounds for relief raised in this petition been presented to the highest state court having jurisdiction? Yes No

18) If you have answered "No" to question 17, state which grounds have not been so presented and briefly give your reason(s) for not presenting them N/A

19) If any of the grounds listed in this petition, were not previously presented in any other court, state briefly what grounds were not so presented, and give your reasons for not presenting them N/A

20) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes No If "Yes", state the location of the court, the type of proceeding, the issues raised, the result and the date of the court's decision for each petition, application or motion filed N/A

21) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes No

22) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Lorie Melone

(b) At arraignment and plea Lorie Melone

(c) At trial Lorie Melone

(d) At sentencing Lorie Melone

(e) On appeal Stanley D. Monroe, 525 S. Main, Ste 600
Tulsa, OK 74103

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding
N/A

23) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes No .

24) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes No .

(a) If so, give name and location of court which imposed sentence to be served in the future _____

(b) And give date and length of service to be served in the future _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes No .

SECOND OR SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. §2244, as amended by Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No 104-132, §106, 110 Stat. 1214 (April 24, 1996).

25) If you are raising a claim which you have not presented in prior application have you obtained an order from the United States Court of Appeals for the Tenth Circuit authorizing this district court to consider the application? Yes No (Please attach a copy of the order)

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.



Signature of Attorney (if any)
525 South Main, Ste 600
Tulsa, OK 74103
918-633-1098
(Attorney's full address and telephone number)



Original Signature of Petitioner

NOTE: DECLARATION NEXT PAGE

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares (or certifies, verifies, or states) under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at McAlester, OK on 7/9/02.
(Location) (Date)

Rinal A. Brewer
Original Signature